

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-387-A - ORDER NO. 2020-757
DECEMBER 22, 2020

IN RE: Rulemaking Proceeding for the Purpose of)	ORDER
Promulgating a Regulation to Help Prevent)	PROMULGATING
the Potential for Misleading Advertisements)	REGULATION 103-823.2
by Prohibiting the Sale of Customer Data by)	
Regulated Utilities Absent a Customer's)	
Direct Consent (See Commission Order No.)	
2019-877))	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) for consideration of promulgating new Regulation 103-823.2, *Protection of Customer Data*. The proposed regulation is necessary to provide rules to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer’s direct consent.

II. FACTS AND PROCEDURAL HISTORY

On November 25, 2019, during a regularly scheduled Commission Business Meeting, the Commission addressed an article published in *The State* newspaper regarding the sale of customer information by a regulated utility to a third party entity, who then used that information in a mail marketing campaign in an attempt to sell insurance. Subsequently, on November 27, 2019, the South Carolina Office of Regulatory Staff (“ORS”) filed a Petition for Rulemaking with the Commission pursuant to S.C. Code Ann. Regs. 103-825 (2012). ORS stated the use of customer data by an

independent third party could cause confusion to utilities' customers and be misleading. In order to protect consumers and the public interest, ORS urged the Commission to consider regulations regarding the sale of customer data by regulated utilities absent a customer's consent and requested promulgating a regulation to this effect.

On December 18, 2019, the Commission entered Order No. 2019-877, approving ORS's request to initiate a rulemaking and open a new docket. On December 19, 2019, the Commission opened Docket No. 2019-387-A and posted a Notice of New Docket & Rulemaking Proceeding. ORS filed the Proposed Regulation to Protect Customer Data on December 20, 2019.

Petitions to Intervene were filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together, the "Duke Companies") on December 30, 2019, Dominion Energy South Carolina, Inc. ("DESC" or "Dominion") on January 13, 2020, Blue Granite Water Company ("Blue Granite") on January 14, 2020, Carri Grube-Lybarker as Consumer Advocate for the State of South Carolina and Administrator of the South Carolina Department of Consumer Affairs ("Consumer Advocate" or "DCA") on January 15, 2020, and Piedmont Natural Gas Company, Inc. ("Piedmont") on January 22, 2020. *See* Order Nos. 2020-45, 2020-80, 2020-81, 2020-82, and 2020-109 granting these Petitions to Intervene.

a. Notice of Drafting

On January 10, 2020, Commission staff filed a Notice of Drafting; it was published in Volume 44, Issue 1, of the *State Register*. S.C. Code Ann. § 58-3-140 (2015); S.C. Code Ann. § 1-23-40(1) (2005); S.C. Code Ann. § 1-23-11 (2005); 44 *State*

Register, Issue 1, p. 15 (January 24, 2020). The Notice of Drafting contained a synopsis of the proposed regulation, the Commission’s statutory authority in promulgating the regulation, and instructions for interested persons to file comments on the initial draft no later than 4:45 p.m. on Thursday, March 12, 2020. S.C. Code Ann. § 1-23-110(A)(1)(a)-(c) (2005). Comments were received from the Duke Companies, Dominion, and the Consumer Data Industry Association (“CDIA”). S. Jahue Moore, Esquire, filed a letter with the Commission on March 19, 2020 on behalf of the Town of Irmo.

Commenters generally supported the initial draft of the proposed regulation, adding a few suggestions and amendments. The Duke Companies urged the Commission to utilize the Duke Companies’ previously approved Code of Conduct as a starting point for the rulemaking, taking into consideration the ongoing North Carolina proceedings. Dominion offered amendments related to aggregated data, outlined specific exceptions where disclosure of customer data benefits customers, and proposed language to disallow the creation of private causes of action or support class action lawsuits. CDIA suggested inclusion of a fraud prevention exception, so that utility providers can use consumer information to help businesses and government prevent fraud.

The Town of Irmo requested drafting of the regulation in such a way that does not require customer consent to disclose information to municipalities. The Town of Irmo has an arrangement with Blue Granite whereby Blue Granite provides the town with a list of addresses (not names of customers) for which sewer service has been disconnected. The town uses the information Blue Granite provides – which is maintained as confidential and protected from disclosure under § 30-4-40 of the *Freedom of*

Information Act – to verify that illegal dumping is not taking place. The Town of Irmo has had serious problems in the past where a customer does not pay a bill but simply disconnects the pipe and discharges directly onto the ground.

Commission staff revised the proposed regulation to account for comments submitted by the Duke Companies, Dominion, CDIA, and the Town of Irmo. The new proposed Commission Regulation 103-823.2 with comments incorporated, along with a Statement of Need and Reasonableness, a preliminary Fiscal Impact Statement, and Notice of Public Hearing and Opportunity for Public Comment was published in the *State Register*. 44 *State Register*, Issue 6, pp. 65-67 (June 26, 2020). The public comment period expired at 4:45 p.m. on August 3, 2020. *Id.*

b. Comments to New Proposed Regulation 103-823.2

Dominion acknowledged the new proposed regulation addressed its initial concerns. In the utility's opinion, the revisions would benefit customers by: (1) removing obstacles to providing emergency and storm damage response; (2) processing customer assistance requests, claims, and complaints; and (3) providing appropriate cooperation with law enforcement. Dominion did not offer any additional written comments to the new proposed regulation.

The Consumer Advocate offered comments regarding Personal Identifying Information ("PII"), protection of the customer data of former customers, implementation of a due diligence requirement, and enactment of an initial and annual written notice requirement.

The Duke Companies asserted they work diligently to protect customer data from unauthorized or inappropriate disclosure and are supportive of the new proposed regulation. They offered a comment regarding PII and suggested amendments to Subsections (F)(1), (F)(3)(b), (F)(3)(n), and (G). The Duke Companies stated that the new proposed regulation will provide robust protection for customer data while allowing for an efficient and workable administrative process for the utilities that would not impose additional, unnecessary costs on ratepayers.

On September 15, 2020, Commission staff filed a red-lined draft of proposed Regulation 103-823.2, incorporating the August 3, 2020 comments.

c. Virtual Hearing

A virtual public hearing was held on September 16, 2020, at 10:00 a.m. with the Honorable Justin Williams, Chairman, presiding. Jocelyn Boyd, Chief Clerk and Executive Director, entered all jurisdictional documents into the record and outlined the new proposed Regulation 103-823.2. *See* Hearing Exhibit No. 1. The record remained open for additional comments until noon on September 18, 2020. S.C. Code Ann. § 1-23-111(B) (2005).

III. DISCUSSION

The Commission is required to “consider fully all written and oral submission respecting the proposed regulation,” which are outlined herein. S.C. Code Ann. § 1-23-110(C)(1) (2019 Supp.). No party or person expressed concern with protecting the customer data of former customers, as proposed by the Consumer Advocate; the addition of “or regulation” to Subsection (F)(3)(b) and “or review payment history” to Subsection

(F)(3)(n), as proposed by the Duke Companies; or the revision to Section G, as proposed by the Duke Companies.

a. Town of Irmo

The Town of Irmo expressed concern with Subsections (F)(3)(a) and (F)(3)(b), stating the subsections, even with the proposed revisions, did not adequately address arrangements such as the one it has with Blue Granite. The municipality recommended including the following language in the final regulation: *“Nothing in this regulation precludes the utility from advising local municipalities when service is disconnected.”*

The Commission is persuaded by the Town of Irmo’s comments. Should customer consent be required prior to Blue Granite disclosing disconnections to the municipality, enforcement issues may arise, making it more difficult to detect and investigate illegal dumping activities. Hindering the Town of Irmo’s ability to obtain this information is not in the public interest. We amend the final regulation to adopt language similar to the Town of Irmo’s proposed language.

b. Personal Identifying Information (“PII”)

Parties expressed concern with inconsistency in the definitions of PII. The definition of “customer data” in (A)(3) includes PII and a definition of PII – as defined in code sections 16-13-510(D) and 39-1-90(D)(3) – that differs from the new, standalone definition of PII that has been added to Subsection (A). The Consumer Advocate believed the Commission could use either definition but noted that the Title 16 definition of PII is broader than the Title 39 definition. The Consumer Advocate also suggested use of a different term than PII to avoid confusion with these code sections.

ORS offered that the referenced code sections do not encompass all PII envisioned by the new proposed regulation. If the code sections are referenced in the final regulation, ORS recommended including a current or former customer's name, account number, billing history, address, email address, telephone number, and fax number in the definition of PII because these items are not already covered by the definitions in code sections 16-13-510(D) and 39-1-90(D)(3). In addition, ORS proposed updating subsections that only mention "customer data" to also include PII, if PII is separately defined from "customer data" in the final regulation.

The Commission agrees that the definitions of PII are conflicting and can cause confusion. The final regulation is amended such that the definition of PII is included within the definition of "customer data." Further, the definition of PII references code sections 16-13-510(D) and 39-1-90(D)(3) and encompasses a current or former customer's name, account number, billing history, address, email address, telephone number, and fax number.

c. Due Diligence Requirement

The Consumer Advocate proposed the imposition of a due diligence requirement on utilities "when choosing third parties with whom it will share data." Dominion and the Duke Companies asserted such a requirement would be unnecessarily burdensome and costly.

According to Dominion, a due diligence requirement would require, among other things, that the utilities hire more personnel and implement additional internal controls, the cost of which would ultimately be passed along to ratepayers. Dominion opined that

Subsection (F)(3)(p) provides the same protections contemplated by the proposed due diligence requirements.

Similarly, the Duke Companies expressed concern regarding implementation of the Consumer Advocate's proposed due diligence requirement, adding that the requirement is founded upon the incorrect assumption that utilities have a contract with all third parties with whom customer data is shared. The Duke Companies share information with third parties in absence of a contractual relationship, for example, when a customer requests their specific usage data to be sent to a third party for energy analysis or when an assistance agency wishes to pay a customer's bill. The Duke Companies state they run extensive checks on any vendors that are hired under contract and running such an extensive check on and policing every third party would be burdensome and expensive, and such costs would be passed along to ratepayers.

Chief Clerk Boyd offered that due diligence requirements be addressed in each utility's respective "Public Utility Guidelines." *See* Section H of the new proposed Regulation 103.823.2. Dominion, the Duke Companies, and the Consumer Advocate generally agreed with Chief Clerk Boyd's suggestion. The Duke Companies added, by letter dated September 18, 2020, that each utility is uniquely situated when it comes to what types of information they collect, retain, and may share with third parties . . . "[A]pplying due diligence and ongoing compliance monitoring requirements would make little sense in a situation where, for example, the utility shares very limited customer information, with the customer's consent, with a third party for a narrow purpose (e.g., in a one-time customer assistance arrangement)."

The Commission is persuaded by the solution offered by Chief Clerk and Executive Director Boyd. It fairly and reasonably balances the needs of the utility with the protection of consumer data. Each utility can develop cost effective, workable due diligence measures, taking into consideration any circumstances which preclude implementation of the due diligence requirement as proposed by the Consumer Advocate. Further, these issues are better addressed as each utility develops and seeks Commission approval of their respective guidelines. As Section H requires each utility to seek Commission approval of its initial guidelines, the Commission is afforded the opportunity to fully assess each utility's respective due diligence policies, practices, and procedures.

d. Notice to Customers

The Consumer Advocate proposed initial and annual written notice of the utility's privacy policies. Dominion and the Duke Companies believe the potential costs of producing and mailing initial and annual notices would be substantial while the benefit to customers would be minimal. Dominion estimates the cost of mailing a bill insert to be \$4,200 annually, at a minimum; a special mailing would cost approximately \$335,000 annually. *See* Dominion Letter Providing Cost Information (September 18, 2020). Both utilities state their respective privacy notices are available on the companies' websites, and the cost of complying would be a cost borne by customers.

The Commission is persuaded by the cost-benefits analysis argument presented by Dominion and the Duke Companies. It is unreasonable to impose an initial and annual written notice of a utility's privacy policy where such additional costs would be passed onto ratepayers and where such information is available on the companies' websites. The

final regulation is amended to require each utility to outline its practices and procedures to provide initial and annual notification of its privacy policy to its customers.

e. Penalty Provisions

Commission Chairman Justin Williams questioned the lack of inclusion of a penalty provision for failure to comply with the proposed regulation. During the virtual hearing, Chief Clerk and Executive Director Boyd suggested a Rule to Show Cause proceeding if a utility violates the provisions of this regulation. The Duke Companies suggested use of the Commission's current complaint procedure.

Later, by letter dated September 18, 2020, the Duke Companies questioned the authority of the Commission to add a penalty provision to a regulation without express statutory authority. *See* Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Joint Reply Comments (September 18, 2020). The Duke Companies offered that such an addition could represent a substantive change in the content of the regulation, prompting the reopening of the rulemaking process. *Id.*

The final regulation does not impose a penalty. The Commission is amending the regulation to include language informing the regulated community that a violating utility will be subject to any penalty the Commission is already statutorily authorized to impose.

IV. FINDINGS OF FACT

1. The Commission finds it just and reasonable to: (a) include protection of the customer data of former customers; (b) add "or regulation" to Subsection (F)(3)(b) and "or review payment history" to Subsection (F)(3)(n); and (c) adopt the revision to Section G in the final regulation.

2. The Commission further finds that the revision to Section G in the final regulation is not a substantive change; whereas, if the change in Section G is determined to be a substantive change, then the change in Section G was fully raised, considered, or discussed by public comment received pursuant to South Carolina Code Section 1-23-110 (Supp. 2019).

3. The Commission finds it just and reasonable to adopt the following language in the final regulation: *“Nothing in this regulation precludes the utility from advising a municipality when service is disconnected.”*

4. The Commission finds it just and reasonable to include “personal identifying information” within the definition of “customer data” in the final regulation. PII will reference code sections 16-13-510(D) and 39-1-90(D)(3) and encompass a current or former customer’s name, account number, billing history, address, email address, telephone number, and fax number.

5. The Commission finds it just and reasonable to impose the utility-specific due diligence requirement as an additional provision of Section H, “Public Utility Guidelines.”

6. The Commission finds it just and reasonable to require each utility to outline its practices and procedures to provide initial and annual notification of its privacy policy to its customers.

7. The Commission finds it just and reasonable to subject a violating utility to any penalty granted to it by statute or regulation.

V. CONCLUSIONS OF LAW

1. The Commission concludes that new Regulation 103-823.2, *Protection of Customer Data*, as proposed and revised herein, is just and reasonable. S.C. Code Ann. § 58-3-140(A) (2015).

2. The Commission concludes that new Regulation 103-823.2, *Protection of Customer Data*, as proposed and revised herein, meets the requisite need and reasonableness. S.C. Code Ann. § 1-23-115(C)(1)-(3), (9)-(11) (Supp. 2019).

3. The Commission concludes that new Regulation 103-823.2, *Protection of Customer Data*, as proposed and revised herein, shall be submitted to the General Assembly for review. S.C. Code Ann. § 1-23-110(C)(2) (Supp. 2019).

VI. ORDERING PROVISIONS

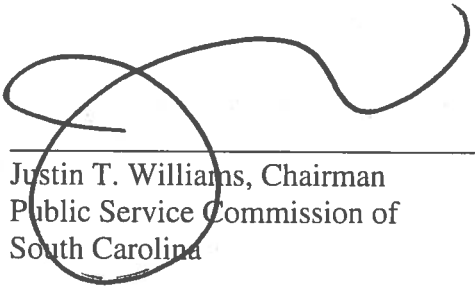
IT IS THEREFORE ORDERED THAT:

1. New Regulation 103-823.2, *Protection of Customer Data*, as proposed and revised herein, is hereby promulgated.

2. New Regulation 103-823.2, *Protection of Customer Data*, as proposed and revised herein, shall be submitted to the General Assembly for review. S.C. Code Ann. § 1-23-11 (2005); §§ 1-23-115 & 1-23-120 (Supp. 2019).

3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina

Document No. 4969
PUBLIC SERVICE COMMISSION
CHAPTER 103
Statutory Authority: 1976 Code Section 58-3-140

103-823.2. Protection of Customer Data. (New)

Synopsis:

The Public Service Commission of South Carolina proposes to add a regulation which pertains to protection of jurisdictional public utility customer data. On November 27, 2019, the Office of Regulatory Staff (ORS) filed a Petition for Rulemaking with the Public Service Commission "for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's direct consent." In its November 27, 2019, Petition for Rulemaking, the Office of Regulatory Staff noted that "[o]n November 25, 2019, in a regularly scheduled Commission Business Meeting, Commissioner Ervin addressed an article filed in *The State* newspaper regarding the sale of customer information from one regulated utility to an outside third party, which then proceeded to use that information to attempt to sell insurance by way of mail marketing."

In the ORS's Petition for Rulemaking, it stated that "the protection of the public interest requires that the Commission hold a rulemaking proceeding to determine appropriate parameters and standards regarding a utility's use of customer data." ORS further recommended in its Petition that "the regulations regarding a utility's ability to sell customers' data be examined. ORS recommend[ed] the Commission consider regulations to apply to all regulated utilities that help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's consent." After the ORS filed its Petition for Rulemaking "for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's direct consent", the Commission issued Order Number 2019-877 on December 18, 2019. In Order Number 2019-877, the Commission approved the ORS's request to initiate a rulemaking, and the Commission opened a docket for this rulemaking. On December 20, 2019, the ORS filed its Proposed Regulation to Protect Customer Data with the Public Service Commission.

The Notice of Drafting regarding this regulation was published on January 24, 2020, in the *State Register*, Volume 44, Issue 1.

Instructions:

Print the regulation as shown below.

Text:

103-823.2. Protection of Customer Data.

A. Definitions of Key Terms.

(1) Aggregated Data. The term "aggregated data" means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or the compilation of customer data from which all unique identifiers have been removed.

(2) Commission. The term "Commission" means the Public Service Commission of South Carolina.

(3) Customer Data. For purposes of this section, "customer data" means data about a current or former customer's electric, natural gas, water, or wastewater usage; information that is obtained as part of an advanced metering infrastructure; and personal identifying information, as defined in S.C. Code Ann.

Section 39-1-90(D)(3) and S.C. Code Ann. Section 16-13-510(D), as may be amended, including the name, account number, billing history, address of the customer, email address, telephone number, and fax number, in the possession of electric, natural gas, water or wastewater public utilities.

Also, "customer data" means non-public retail customer-specific data or information that has been obtained or compiled by a public utility in connection with the supplying of Commission-regulated electric, natural gas, waste, or wastewater services. Customer data includes data or information that is: (a) collected from the meter, by the public utility, and stored in its data systems for billing purposes; (b) customer-specific usage information for regulated public utility service; (c) about the customer's participation in regulated public utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs; or (d) any other non-public information specific to a customer that is related to electricity consumption, load profile, or billing history.

(4) Non-Public Utility Operations. The term "non-public utility operations" means all business enterprises engaged in by a public utility that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

(5) Primary Purpose. The term "primary purpose" means the acquisition, storage or maintenance of customer data by a public utility, as defined by Title 58 of the South Carolina Code, which provides services pursuant to state law, federal law, or Order of the Commission.

(6) Secondary Commercial Purpose. The term "secondary commercial purpose" means any purpose that is not a primary purpose.

(7) Third Party. The term "third party" means a person who is not the customer, nor any of the following: (i) an agent of the customer designated by the customer with the public utility to act on the customer's behalf; (ii) a regulated public utility serving the customer; or (iii) a contracted agent of the public utility. For purposes of this regulation, "third party" includes any non-public utility operations or affiliate of the public utility.

(8) Unique Identifier. The term "unique identifier" means a customer's name, account number, meter number, mailing address, telephone number, or email address.

B. Aggregated data which has been aggregated to a degree that individual customer information is not identifiable shall not be considered "customer data."

C. Customer Consent.

(1) A public utility shall not share, disclose, or otherwise make accessible to any third party a customer's data, except as provided in subsection (F) or upon the consent of the customer.

(2) A public utility shall not sell a customer's data for any purpose without the consent of the customer.

(3) The public utility or its contractors shall not provide an incentive or discount to the customer for accessing the customer's data without the prior consent of the customer.

(4) Before requesting a customer's consent for disclosure of customer data, a public utility shall be required to make a full disclosure to the customer of the nature and scope of the data proposed to be disclosed, the identity of the proposed recipient and the intended use of the data by the proposed recipient.

D. If a public utility contracts with a third party for a service that allows a customer to monitor the customer's usage, and that third party uses the data for a secondary commercial purpose, the contract between the public utility and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer and secures the customer's consent to the use of his or her data for that secondary commercial purpose prior to the use of the data.

E. A public utility shall use reasonable security procedures and practices to protect a customer's unencrypted consumption data from unauthorized access, destruction, use, modification, disclosure, and to prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent.

F. Exceptions to Sections A through E.

(1) This section shall not preclude a public utility from disclosing aggregated data for analysis, reporting, or program management.

(2) This section shall not preclude a public utility from disclosing customer data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or

energy efficiency programs, or for fraud prevention purposes, provided that the public utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal identifying information contained in the customer data from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's prior consent to that use.

(3) This section shall not preclude a public utility from disclosing customer data in the course of its operations:

(a) Where necessary to provide safe and reliable service;

(b) As required or permitted under state or federal law or regulation or by an Order of the Commission;

(c) Including disclosures pursuant to and permitted by the Fair Credit Reporting Act Section 1681 et seq., Title 15 of the United States Code including for purposes of furnishing account and payment history information to and procuring consumer reports from a consumer reporting agency as defined by 15 U.S.C. Section 1681;

(d) Upon valid request from law enforcement;

(e) To respond to an emergency;

(f) To respond to service interruption reports or service quality issues;

(g) To restore power after a storm or other disruption;

(h) To respond to customers' requests for line locations, installation or repair of streetlights, support for construction or tree trimming/removal by customer, or other service orders or requests;

(i) To inform customers as to tree trimming/vegetation control plans and schedules;

(j) To respond to claims for property damage by the customer resulting from tree trimming/vegetation control or public utility construction;

(k) To respond to customer complaints;

(l) To protect the health or welfare of the customer or to prevent damage to the customer's property;

(m) To assist the customer in obtaining assistance from social services, community action, or charitable agencies;

(n) To perform credit checks or review payment history where customer deposits might otherwise be required or retained;

(o) Where circumstances require prompt disclosure of specific information to protect customers' interests or meet customers' reasonable customer service expectations; or

(p) This section shall not preclude a public utility from, in its provision of regulated public utility service, disclosing customer data to a third party, consistent with the public utility's most recently approved Code of Conduct, to the extent necessary for the third party to provide goods or services to the public utility and upon written agreement by that third party to protect the confidentiality of such customer data.

(4) Nothing in this section precludes the utility from advising a municipality when service is disconnected.

G. If a customer discloses or authorizes the utility to disclose his or her customer data to a third party, the public utility shall not be responsible for the security of that data, or its use or misuse.

H. Public Utility Guidelines.

(1) Each electrical, natural gas, water or wastewater public utility shall develop and seek Commission approval of guidelines for implementation of this section.

(2) The electrical, natural gas, water or wastewater public utility shall file its initial guidelines within 180 days of the effective date of this regulation for Commission approval. The guidelines should, at minimum, address the following:

(a) Customer Notice and Awareness – practices to explain policies and procedures to customers.

(b) Customer Choice and Consent – processes that allow the customer to control access to customer data including processes for customers to monitor, correct or limit the use of customer data.

(c) Customer Data Access – procedures for use of customer data, purpose for collection, limitations of use of customer data and processes for customer non-standard requests.

(d) Data Quality and Security Procedures and Measures – procedures for security and methods to aggregate or anonymize data.

(e) Public Utility Accountability and Auditing – reporting of unauthorized disclosures, training protocol for employees, periodic evaluations, self-enforcement procedures, and penalties.

(f) Frequency of Notice to Customers – practices and procedures to provide initial and annual notification of its privacy policy to customers.

(g) Due Diligence Exercised by Utility When Sharing Customer Data with Third Parties – practices, policies, and procedures when selecting the third party with whom the utility will share data so as to minimize unauthorized or inadvertent disclosure of customer data.

I. No Private Right of Action. This regulation shall be enforced by regulatory enforcement actions only. No private right of action for damages is created hereby.

J. Penalties. Failure to comply with this section is subject to any authority granted to the Commission by statute or regulation.

Fiscal Impact Statement:

The Commission anticipates utilizing its current resources to address administrative and legal issues in dockets related to the protection of jurisdictional public utilities' customer data. The Commission does not anticipate a fiscal impact to the Agency as a result of the implementation of Regulation 103-823.2.

Statement of Rationale:

Currently, no regulation exists which governs the protection of customer data in the custody of public utilities. To protect the public interest, a regulation should be promulgated which outlines the appropriate parameters and standards regarding a public utility's use of customer data. There was no scientific or technical basis relied upon in the development of this regulation.

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CHAPTER 103
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(2) Commission. The term “Commission” means the Public Service Commission of South Carolina.

(3) Customer Data. For purposes of this section, “customer data” means data about a current or former customer’s electric, natural gas, water, or wastewater usage; information that is obtained as part of an advanced metering infrastructure; and personal identifying information, as defined in S.C. Code Ann.

Section 39-1-90(D)(3) and S.C. Code Ann. Section 16-13-510(D), as may be amended, including the name, account number, billing history, address of the customer, email address, telephone number, and fax number, in the possession of electric, natural gas, water or wastewater public utilities.

Also, "customer data" means non-public retail customer-specific data or information that has been obtained or compiled by a public utility in connection with the supplying of Commission-regulated electric, natural gas, waste, or wastewater services. Customer data includes data or information that is: (a) collected from the meter, by the public utility, and stored in its data systems for billing purposes; (b) customer-specific usage information for regulated public utility service; (c) about the customer's participation in regulated public utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs; or (d) any other non-public information specific to a customer that is related to electricity consumption, load profile, or billing history.

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(5) Primary Purpose. The term "primary purpose" means the acquisition, storage or maintenance of customer data by a public utility, as defined by Title 58 of the South Carolina Code, which provides services pursuant to state law, federal law, or Order of the Commission.

(6) Secondary Commercial Purpose. The term "secondary commercial purpose" means any purpose that is not a primary purpose.

(7) Third Party. The term "third party" means a person who is not the customer, nor any of the following: (i) an agent of the customer designated by the customer with the public utility to act on the customer's behalf; (ii) a regulated public utility serving the customer; or (iii) a contracted agent of the public utility. For purposes of this regulation, "third party" includes any non-public utility operations or affiliate of the public utility.

(8) Unique Identifier. The term "unique identifier" means a customer's name, account number, meter number, mailing address, telephone number, or email address.

B. Aggregated data which has been aggregated to a degree that individual customer information is not identifiable shall not be considered "customer data."

C. Customer Consent.

(1) A public utility shall not share, disclose, or otherwise make accessible to any third party a customer's data, except as provided in subsection (F) or upon the consent of the customer.

(2) A public utility shall not sell a customer's data for any purpose without the consent of the customer.

(3) The public utility or its contractors shall not provide an incentive or discount to the customer for accessing the customer's data without the prior consent of the customer.

(4) Before requesting a customer's consent for disclosure of customer data, a public utility shall be required to make a full disclosure to the customer of the nature and scope of the data proposed to be disclosed, the identity of the proposed recipient and the intended use of the data by the proposed recipient.

D. If a public utility contracts with a third party for a service that allows a customer to monitor the customer's usage, and that third party uses the data for a secondary commercial purpose, the contract between the public utility and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer and secures the customer's consent to the use of his or her data for that secondary commercial purpose prior to the use of the data.

E. A public utility shall use reasonable security procedures and practices to protect a customer's unencrypted consumption data from unauthorized access, destruction, use, modification, disclosure, and to prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent.

F. Exceptions to Sections A through E.

(1) This section shall not preclude a public utility from disclosing aggregated data for analysis, reporting, or program management.

(2) This section shall not preclude a public utility from disclosing customer data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or

energy efficiency programs, or for fraud prevention purposes, provided that the public utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal identifying information contained in the customer data from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's prior consent to that use.

(3) This section shall not preclude a public utility from disclosing customer data in the course of its operations:

- (a) Where necessary to provide safe and reliable service;
- (b) As required or permitted under state or federal law or regulation or by an Order of the Commission;
- (c) Including disclosures pursuant to and permitted by the Fair Credit Reporting Act Section 1681 et seq., Title 15 of the United States Code including for purposes of furnishing account and payment history information to and procuring consumer reports from a consumer reporting agency as defined by 15 U.S.C. Section 1681;
- (d) Upon valid request from law enforcement;
- (e) To respond to an emergency;
- (f) To respond to service interruption reports or service quality issues;
- (g) To restore power after a storm or other disruption;
- (h) To respond to customers' requests for line locations, installation or repair of streetlights, support for construction or tree trimming/removal by customer, or other service orders or requests;
- (i) To inform customers as to tree trimming/vegetation control plans and schedules;
- (j) To respond to claims for property damage by the customer resulting from tree trimming/vegetation control or public utility construction;
- (k) To respond to customer complaints;
- (l) To protect the health or welfare of the customer or to prevent damage to the customer's property;
- (m) To assist the customer in obtaining assistance from social services, community action, or charitable agencies;
- (n) To perform credit checks or review payment history where customer deposits might otherwise be required or retained;
- (o) Where circumstances require prompt disclosure of specific information to protect customers' interests or meet customers' reasonable customer service expectations; or
- (p) This section shall not preclude a public utility from, in its provision of regulated public utility service, disclosing customer data to a third party, consistent with the public utility's most recently approved Code of Conduct, to the extent necessary for the third party to provide goods or services to the public utility and upon written agreement by that third party to protect the confidentiality of such customer data.

(4) Nothing in this section precludes the utility from advising a municipality when service is disconnected.

G. If a customer discloses or authorizes the utility to disclose his or her customer data to a third party, the public utility shall not be responsible for the security of that data, or its use or misuse.

H. Public Utility Guidelines.

(1) Each electrical, natural gas, water or wastewater public utility shall develop and seek Commission approval of guidelines for implementation of this section.

(2) The electrical, natural gas, water or wastewater public utility shall file its initial guidelines within 180 days of the effective date of this regulation for Commission approval. The guidelines should, at minimum, address the following:

- (a) Customer Notice and Awareness – practices to explain policies and procedures to customers.
- (b) Customer Choice and Consent – processes that allow the customer to control access to customer data including processes for customers to monitor, correct or limit the use of customer data.
- (c) Customer Data Access – procedures for use of customer data, purpose for collection, limitations of use of customer data and processes for customer non-standard requests.

(d) Data Quality and Security Procedures and Measures – procedures for security and methods to aggregate or anonymize data.

(e) Public Utility Accountability and Auditing – reporting of unauthorized disclosures, training protocol for employees, periodic evaluations, self-enforcement procedures, and penalties.

(f) Frequency of Notice to Customers – practices and procedures to provide initial and annual notification of its privacy policy to customers.

(g) Due Diligence Exercised by Utility When Sharing Customer Data with Third Parties – practices, policies, and procedures when selecting the third party with whom the utility will share data so as to minimize unauthorized or inadvertent disclosure of customer data.

I. No Private Right of Action. This regulation shall be enforced by regulatory enforcement actions only. No private right of action for damages is created hereby.

J. Penalties. Failure to comply with this section is subject to any authority granted to the Commission by statute or regulation.

Fiscal Impact Statement:

The Commission anticipates utilizing its current resources to address administrative and legal issues in dockets related to the protection of jurisdictional public utilities' customer data. The Commission does not anticipate a fiscal impact to the Agency as a result of the implementation of Regulation 103-823.2.

Statement of Rationale:

Currently, no regulation exists which governs the protection of customer data in the custody of public utilities. To protect the public interest, a regulation should be promulgated which outlines the appropriate parameters and standards regarding a public utility's use of customer data. There was no scientific or technical basis relied upon in the development of this regulation.